identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 31 2007

SRC 05 204 51074

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marie Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The alien beneficiary seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts. The beneficiary is a painter. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner failed to establish that the beneficiary qualifies for classification as an alien of exceptional ability in the arts, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

Part 1 of the Form I-140 petition identifies the alien beneficiary as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is not the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 8 of the Form I-140, "Signature," has been signed not by the alien beneficiary, but by his attorney, who indicated that she signed on the beneficiary's behalf. Thus, the attorney, and not the beneficiary, has taken responsibility for the content of the petition. We note that the record contains Form G-28, Notice of Entry of Appearance as Attorney or Representative, purporting to show that the attorney represents the beneficiary as counsel in this matter, but on this form, too, the attorney has signed her own name where the beneficiary's own signature belongs. Therefore, we cannot consider the attorney to be the beneficiary's counsel of record. We must, however, consider the attorney to be the petitioner.

Pursuant to 8 C.F.R. § 204.5(k)(1), if an alien seeks a national interest waiver, then the alien, or anyone in the alien's behalf, may be the petitioner. Because "anyone" may file the petition, the finding that the attorney is the *de facto* petitioner does not mean that the petition itself was not properly filed.

8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to Citizenship and Immigration Services (CIS)) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. 8 C.F.R. § 103.3(a)(2)(v) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee CIS has accepted will not be refunded.

Here, the party that signed the Form I-290B Notice of Appeal was not the petitioner, nor any attorney or accredited representative of the petitioner, but rather the petitioner's law partner, [redacted]a. Mr. [redacted] presents himself as the alien's attorney, not as his partner's attorney, and there is no Form G-28 in the record to designate him as his partner's attorney. Therefore, Mr. [redacted] has no standing to file an appeal on the petitioner's behalf. We must, therefore, reject the appeal as improperly filed. We note, at the same time, that the director has consistently referred to the alien beneficiary as the petitioner in this proceeding, further contributing to the confusion as to the true identity of the petitioner (and, therefore, the question of who must file the appeal).

8 C.F.R. § 103.5a(a)(1) defines "routine service" as mailing a copy by ordinary mail addressed to a person at his or her last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director addressed the notices to the attention of the alien beneficiary (albeit in care of the petitioning

attorney), rather than to the petitioning attorney herself, the director has arguably never properly served the notice of denial, and therefore true petitioner has not had the opportunity to file a timely appeal. The director must reissue the denial notice in order to give the actual petitioner that opportunity. (If the petitioner chooses once again to submit a Form I-290B signed by her law partner rather than by herself, the appeal must also contain a valid Form G-28 executed and signed by the petitioner and her partner, authorizing her partner to represent her in this proceeding.)

Because there is, as yet, no valid appeal in the record, we examine, here, neither the basis of the denial nor the merits of the appeal submitted by the petitioner's law partner. We will duly consider those factors if and when the petitioner files a proper and timely appeal.

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but rather by the petitioner's law partner. Therefore, the appeal has not been properly filed, and must be rejected. The director must serve a newly dated copy of the decision, properly addressed to the petitioner (rather than to a third party, in care of the petitioner).

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision.